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REMARKS AND ARGUMENTS

DEC 27 2006

Claims 1 and 3-12 are pending in the present application, of which claims 1, 3 and 9 are independent. No claims have been amended, canceled or added in this Response. Claims 3-5 were found to be allowable.

Claims 1 and 6-12 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The subject matter objected to was the MIT:MBI biocide ratios "750:1 to 1:1", "750:1 to 2.5:1", "125:1 to 1:1", "750:1 to 2.5:1", and "375:1 to 1:6". Applicants respectfully traverse this rejection.

When Applicants amended the claims in the Amendment submitted November 30, 2005, they used data from their examples as support for the 1:1 and 2.5:1 endpoints of the first four cited ranges. The MPEP allows use of data points from specific examples in the specification as amended range endpoints, and cites a case where the specification disclosed a range of 25-60% and contained an example at 36%, and so "a limitation to 'between 35% and 60%' did meet the description requirement." M.P.E.P. § 2163.05(III) (emphasis added). Here, Applicants used data from the first table on page 10 to support a 1:1 ratio and a 2.5:1 ratio as range endpoints in the claims. In the former case, the table entries at cols. 1&2, 5th row of data, show that 20 ppm of MIT and 20 ppm of MBI, i.e., a 1:1 ratio, is a synergistic mixture (SI<1). In the latter case, the table entries at cols. 4&5, 2nd row of data, show that 10 ppm of MIT and 4 ppm of MBI, i.e., a 2.5:1 ratio, is a synergistic mixture (SI<1). Accordingly, the first four cited ranges are supported by the description in the specification.

Regarding the last cited range, "375:1 to 1:6," which appears in present claim 9, this range is stated in the specification at page 1, line 28, and in original claim 9. Accordingly, Applicants do not understand the basis of the objection to this range, and respectfully submit that the range is supported by the description in the specification.

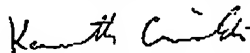
Claims 1, 6-8 and 10-12 were rejected under 35 U.S.C. § 103(a) over Yamaguchi et al. Applicants respectfully traverse this rejection.

The Office Action states that the composition taught by Yamaguchi contains 15 parts MIT and 20 parts MBI, or a 1:1.33 ratio of MIT:MBI, and acknowledges that this is not within the claimed range. The Office Action goes on to assert that "[i]n the absence of unexpected results," Yamaguchi's disclosure renders the claimed invention obvious. However, Applicants have obtained unexpected results, having demonstrated the existence of an unexpected synergistic interaction between MIT and MBI in the claimed range of ratios (see summary table, page 10). For example, when tested against *C. albicans*, 150 ppm MIT and 0.2 ppm MBI (750:1, MIT:MBI)

exhibited synergy (SI<1). Yamaguchi et al. contains no data demonstrating any synergistic interaction at any ratio. Despite the disclosure of a mixture at a 1:1.33 ratio, one skilled in the art would have no reason to expect synergy at that ratio, or at any other. Therefore, the reference cannot render the present invention obvious.

If the Examiner has any concerns regarding the application, Applicants respectfully request that the Examiner contact Applicants' undersigned attorney by telephone to discuss the issues.

Respectfully submitted,



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